ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544



| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |
| | ) | |
| | ) | |

**AT&T's Reply in Support of WorldCom's Petition**

AT&T Corp. ("AT&T") hereby replies to the comments on WorldCom's Petition for Waiver ("Petition") of the use restriction provisions in the Commission's Supplemental Order Clarification ("Clarification Order").[1]

Predictably, the incumbent LECs ("ILECs") reflexively oppose WorldCom's request for permission to convert even a small subset of its special access circuits to unbundled network elements ("UNEs"), even in cases where it is evident that those facilities are being used to provide "a significant amount of local exchange service." These oppositions should be seen for what they are: the ILECs' attempt to retain every dollar of their access revenue, regardless of the fact that WorldCom and CLECs using a similar architecture are indeed using the circuits at issue to provide local exchange service – and thus are entitled to obtain such facilities at cost-based rates. In fact, as shown below, if CLECs were not using such circuits to provide a significant amount of local service, they would *actually lose money* by converting them to UNEs.

[1] Comments were filed by BellSouth Corporation, National Exchange Carrier Association ("NECA"), NET2000 Communications Services, Inc. ("NET2000"): Qwest Corporation; SBC Communications, Inc. ("SBC"); Verizon; VoiceStream Wireless Corporation; and United States Telecom Association ("USTA").

Moreover, as AT&T noted in its comments (n.3), WorldCom's Petition need not be viewed as a petition for "waiver" of the "safe harbors" set out in the Clarification Order. It could equally be viewed as a petition for a declaratory ruling that the circumstances described in the Petition comply with the "significant amount of local service" requirement, which was actually established in the Commission's Supplemental Order.[2] Thus, the Commission need not view the instant petition as a request for a "waiver" at all. Rather, it may treat WorldCom's petition as a request for a declaratory ruling that, under the facts described, a CLEC is providing a "significant amount of local exchange traffic" over the affected circuits. In either event, however, the Petition meets the requisite burden of proof and should be granted.

**Argument**

First, the ILECs are simply wrong that granting the Petition would "repeal" the Clarification Order or further threaten their special access revenues, much less universal service.[3] WorldCom and AT&T together, the two largest interexchange carriers, have indicated that, if adopted, the proposal would only allow the conversion of about 40,000 out of the millions of special access circuits that generate over $6 billion in ILEC revenues yearly.[4] Similarly, it clearly would not "allow the wholesale conversion of switched access facilities to UNEs."[5] Thus, the Proposal will not cause significant financial impact on ILECs or universal service, nor will it generate even a ripple in the

[2] FCC 99-370 (rel. Nov. 24, 1999).

[3] *E.g.*, BellSouth, p. 1; USTA at 3.

[4] Petition at 2; AT&T at 3.

[5] BellSouth at 2; *see also* Qwest at 4.

overall access market.[6] Rather, it is a limited and tailored request that is necessary to balance CLECs' established legal right to use unbundled network elements to provide local service with other purported policy concerns.[7]

Second, the ILECs are wrong that WorldCom's request "removes" the local exchange requirement.[8] In fact, WorldCom's petition does not request the elimination of the "significant amount of local exchange traffic," requirement[9] and explains that there will in fact be significant local exchange traffic on the affected circuits. The problem, however, is that WorldCom and other carriers (i) have special access circuits that they do indeed use to provide significant amounts of local exchange service but (ii) lack mechanisms in place that enable them to calculate, on a channel-by-channel basis, the exact percentage of local (as opposed to switched access) service that is being provided over those facilities.[10] Thus, they cannot certify that they fall within the "safe harbor" provisions of the Clarification Order even though they meet the basic test the Commission has established. Accordingly, WorldCom has proposed an alternative means of demonstrating that circuits ordered under special access tariffs are used to provide a significant amount of local exchange traffic.

---

[6] *See* BellSouth at 2-3.

[7] AT&T at 2-3. Moreover, WorldCom's proposal is carefully crafted to avoid any suggestion (*e.g.*, BellSouth at 2) that it would "preempt" the planned proceeding to reconsider the Commission's 1996 holding that CLECs may use UNEs to provide *exclusively* access services.

[8] BellSouth at 3; *see also* SBC at 8.

[9] Petition at 1; AT&T at 3.

[10] *See* AT&T at 7-9, which rebuts Verizon's claim (at 5) that "there is no reason why" CLEC switches cannot track the destination and duration of calls carried over the circuits in question.

The linchpin of WorldCom's proposal is that it (and other qualifying CLECs) must show a fact that was *not* addressed in the ex partes that preceded the adoption of the Clarification Order, *i.e.*, that the circuits that would be eligible under the proposal are routed to a CLEC's Class 5 local switch *that is not used as an IXC point of presence.* Thus, contrary to the ILECs' claims,[11] even at a surface level, this is a very different requirement from the one discussed in the order itself. There the Commission (¶ 25) found only that "there is no basis to assume that every circuit that terminates in a certain type of switch is being used exclusively for local traffic." Under WorldCom's proposal, however, a CLEC cannot convert a circuit to a UNE unless it is directed to a Class 5 switch that does not act as an IXC POP. This is directly responsive to the ILECs' own concerns that CLECs not be allowed to use UNEs to "bypass" special access circuits that run *directly* from customer premises to an IXC POP or *directly* between two end user locations.[12] Thus, even the ILECs did not express a concern for the kinds of circuits that would qualify under WorldCom's proposal.

All of the ILEC's oppositions also miss an even more fundamental point: *it is economically irrational* for a CLEC to route circuits to a local switch that does not act as an IXC POP unless the facility will be *also* used to provide a significant amount of local exchange service. In the ordinary access configuration, a carrier routes special access traffic directly from its customer's premises to its own long distance switch and pays special access rates for those circuits. No economically rational carrier would choose an alternative method unless it would lower its overall access expense by doing so. In fact,

---

[11] *E.g.*, NECA at 4.

[12] AT&T at 4-5, citing the ILECs' Special Access Fact Report," dated January 19, 2000.

if a carrier is using an ordinary access configuration to provide access service alone, its additional costs to establish the roundabout routing through a Class 5 local switch to its interexchange POP would *more than offset the savings from converting the circuit to a UNE.* Thus, it would be economically irrational for a carrier to order a facility from a customer's premise to a non-POP Class 5 local switch *unless* that circuit is *also* being used to provide a significant amount of local exchange service and thereby generate additional revenues to offset the added expense.

The mathematics here are straightforward. A CLEC will only experience "conversion savings" if the UNE cost for the facility to its non-POP local switch *plus* all the additional work necessary to redirect its access traffic through that switch costs less than the access rate for a direct link between the customer's premises and the IXC POP. That simply doesn't happen in the real world.

In order to save any money from converting access circuits to UNEs, a CLEC must incur several categories of additional expense that do not apply to "pure" access traffic. First, the CLEC must pay for the cost of switching every minute of the customer's long distance traffic through its local switch, which typically is more feature-rich than its long distance switch, and thus more costly to operate. Second, the CLEC must pay to transport the long distance traffic between its two switches. Third, the CLEC must incur significant provisioning and field operations costs to implement the rerouting in its network.[13] Collectively, these additional costs wipe out any savings a CLEC might experience from lowering its costs on the facility between the customer's premises and its

---

[13] Even if the two switches are in close proximity, the CLEC will still incur costs for "zero mile" transport and the associated network reconfiguration costs.

Class 5 switch from special access to UNE rates, even if one makes the stretch assumption that the CLEC would face no special access termination liabilities when converting such circuits. Thus, a rational CLEC simply would not order ILEC facilities between a customer's premises and a non-POP Class 5 switch if it had only its access needs in mind. The additional costs required by such arrangements only make sense if the CLEC *actually* provides significant amounts of local exchange service over those facilities to offset its additional costs.[14]

These stark economic realities make it clear that the described facilities meet the "significant amount of local service" test on a standalone basis. Accordingly, there is no need to impose anti-commingling and collocation requirements to meet the Commission's standard.

Finally, contrary to SBC's claims,[15] WorldCom's proposal does not raise significant administrative or procedural issues. Although AT&T believes that it would be fully appropriate to allocate the price paid for DS-3 transport when traffic from DS-1 local facilities is carried over the same facility as "pure access" traffic, there is no reason why WorldCom's proposal should not apply at least to the DS-1 facilities themselves.[16]

---

[14] This analysis also further rebuts ILEC claims that there would be "wholesale" abandonment of access services if WorldCom's proposal is adopted.

[15] SBC at 7-8.

[16] SBC's attempt (at 6-7) to interject an "impairment" analysis here must be flatly rejected. First, the Commission has acknowledged that such an analysis is not to be conducted on a facility-by-facility basis, which is what SBC's argument would require. More important, this argument revives the thoroughly rejected notion that an ILEC may

**Conclusion**

WorldCom's Petition is necessary to ensure that CLECs are able to obtain network elements used to provide local service as UNEs at cost-based rates, as required by the Act. Further, the Petition does not materially impact the ILECs' concerns about unauthorized "bypass" of special access. Thus, the Petition should be granted.

Respectfully submitted,

AT&T CORP.

Mark C. Rosenblum
Roy E. Hoffinger
Richard H. Rubin
AT&T CORP.
295 North Maple Avenue
Room 1127M1
Basking Ridge, New Jersey 07920
(908) 221-4481

Attorneys for AT&T Corp.

October 10, 2000

---

claim that CLECs are not "impaired" in the absence of a UNE simply because there is an access service substitute for it.

**CERTIFICATE OF SERVICE**

I, Kelly Hannigan, do hereby certify that on this 10th day of October, 2000, a copy of the foregoing "AT&T's Reply in Support of WorldCom's Petition" was served by US first class mail, postage prepaid, on the parties named on the attached service list.

Kelly Hannigan

Kelly Hannigan

Date October 10, 2000

**SERVICE LIST**
**CC DOCKET 96-98**

Steven A. Augustino
Heather M. Wilson
Kelley Drye & Warren LLP
Attorneys for Net2000 Communications Services, Inc.
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Jonathan B. Banks
Robert Sutherland
BellSouth Corporation
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Richard A. Askoff
National Exchange Carrier Association
80 South Jefferson Road
Whippany, NJ 07981

Robert B. McKenna
Jeffry A. Brueggeman
Dan L. Poole
Qwest Corporation
1020 19th Street, N.W., Suite 700
Washington, DC 20036

Lawrence W. Katz
Michael E. Glover
Edward H. Shakin
Verizon
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Brian Thomas O'Connor
Vice President, Legislative & Regulatory Affairs
Robert Calaff
Corporate Counsel, Governmental & Regulatory Affairs
VoiceStream Wireless Corporation
1300 Pennsylvania Avenue, N.W., Suite 700
Washington, DC 20004

Douglas G. Bonner, Esq.
Sana D. Coleman, Esq.
Arent Fox Kintner Plotkin & Kahn PLLC
Attorneys for VoiceStream Wireless Corporation
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Lawrence E. Sargeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
1401 H Street, N.W.
Suite 600
Washington, DC 20005

Christopher M. Heimann
Gary L. Phillips
Roger K. Toppins
SBC Communications, Inc.
1401 Eye Street, N.W., Suite 1100
Washington, DC 20005